1- Civil Misc. App. No.608/1992
Deepali Brahma ***Versus Darshan Singh*** & Ors.
2- Civil Misc. App. No.611/1992
Deepali Brahma & Anr ***Versus Darshan Singh*** & Ors.

Date of Order ::: 21/07/06

Hon'ble Mr. Justice Ajay Rastogi

Mr. Sandeep Mathur for appellant (Claimant)
Mr. Ram Singh for Mr.S.C.Srivastava, for respondents

Both, CMA NOs.608/92 & 611/92 arising out of common Award dt.30/04/91 seeking enhancement of compensation of Rs.35,000/- (MAC No.562/85) and Rs.2,47,000/- (MAC No.561/85) awarded by Motor Accident Claims Tribunal, Jaipur City, are being disposed of by this common order.

Claimants (appellants in CMA 611/92) are wife, who is also injured claimant & appellant in CMA 608/92) and daughter of deceased G.C.Brahma aged 48 years. Deceased alongwith claimants was going in Taxi Car (RRT 6007) from Jaipur to Ajmer during mid night of 11th & 12th May, 1984 while they reached just ahead Bagru village offending truck No.PJB 3525 came from front in a high speed being driven rashly and negligently by its driver and collided from wrong side which resulted in causing death of G.C.Brahma (deceased), Kumari Ratna (d/o of deceased) and car driver Gulab singh and further causing grievous injuries to appellants Kumari Rupa and Smt.Deepali Brahma.

As alleged in claim petition, deceased was working as Manager in Steel Authority of India and was getting salary of Rs.3,293.52p per month. After taking note of totality of facts brought on record, learned Tribunal assessed monthly economic dependency of the family to a sum of Rs.2,000/- and applied

multiplier of 10 and on the basis whereof, in all awarded compensation of Rs.2.47 lacs (including Rs.5,000/- towards consortium to wife and Rs.2,000/- towards love & affection to minor daughter). However learned Tribunal fixed liability of insurer of offending truck to Rs.1.50 lac and while recording finding about limited liability of insurer, has not taken note of premium which it charged for third party risk to a sum of Rs.240/- and Rs.600/- was also charged for wider legal liability, for which no explanation on the part of insurer has come forward as to why premium in excess of liability was charged.

Similarly, learned Tribunal awarded lump sum compensation of Rs.35,000/- (including Rs.4,000/- for permanent disablement and Rs.5,000/- for medical & nourishment died) to claimant injured for her injuries sustained in the accident.

Counsel for appellants submits that economic dependency of the family considered by learned Tribunal is much on lower side and ordinarily one third is deducted and that apart, more than 10 years of service was left behind at the time of accident but future prospects of deceased for increase in salary was not taken into consideration while determining income of the deceased; in such circumstances, what has been finally awarded towards loss of income to claimants is much on lower side and requires interference by this Court and as regards question of limited liability as considered by Tribunal, Counsel for appellants placed reliance upon decisions of this Court (DB) in ***National Insurance Co. Ltd Vs. Laxmi (2005 ACJ 211) and National Insurance Co. Ltd Vs. Hastimal Lodha (2006(1) WLC***

666). Counsel further submits that once premium to the extent of Rs.240/- has been charged that covers risk of all kind of third party liability and the Tribunal has committed an error in recording such finding which is not legally sustainable and deserves to be set aside.

As regards appeal preferred by claimant injured for her injuries sustained in the accident for compensation, Counsel for appellant submits that at the time of accident she was only 42 years and was house wife but as a result of injuries sustained as is evident from medical report viz. (a) fracture in her right leg near hip bone; b) fracture in her left hand's fingers; c) eight teeth were broken; & d) steel rod was inserted in her leg and she remained hospitalized for about 12-15 days and advised for bed rest for a long period and as a result of these injuries, she is facing trouble in walking, eating, chewing, and sitting. But learned Tribunal only awarded lump sum compensation of Rs.35,000/-. Counsel for appellant submits that looking to her age, nature of injuries sustained by her, what learned Tribunal has awarded, is on much lower side, requires enhancement by this Court.

Per contra, Counsel for respondent (Insurer) while supporting finding recorded under Award impugned, submits that salary of deceased as per last pay certificate furnished, was Rs.3,293.52p. out of which there are certain deductions and net salary received by deceased was Rs.2433/- as has come on record and in such circumstances, Rs.2,000/- as assessed as financial dependency of the family is just and reasonable and since 10 years' service had

left, Tribunal has rightly considered to apply multiplier of 10 while awarding just compensation. Counsel further submits that appellant who is injured claimant is also legal heir and wife of deceased G.C.Brahma and she being house wife, incident is of mid night of 11th & 12th May, 1984 and there was no permanent disability due to injuries sustained in the accident; in such circumstances, what has been awarded to her is just and does not require enhancement by this Court.

I have considered contention of Counsel for parties and with their assistance, examined material on record. It remained undisputed that deceased was working as Manager in Steel Authority of India and at the time of accident, 10 years' service had left and last salary drawn by him as is evident from salary certificate was Rs.3293.52p. So far as deduction part is concerned, these deductions were statutory in nature like provident fund etc., as is evident from statement of Ashok (Aw5) who was working as Senior Assistant in the Officer of deceased. What was actually paid to the deceased was not material and the gross salary was rightly taken note of by learned Tribunal as salary on the basis of which, after deduction of 1/3rd deduction towards personal expenses, 2/3rd was considered as family dependency. At the time of accident in 1984, there was no schedule as appended to the Motor Vehicle Act but with longevity of life, multiplier of 10 was considered. However, once schedule has come into force and according to age of deceased, 13 is an appropriate multiplier and in my opinion, in totality of facts, adopting multiplier of 10 when rest of

facts are not in dispute, requires interference and 13 as per Schedule is appropriate multiplier for just compensation.

As regards consortium to wife and compensation for love and affection in my opinion it is also on lower side and requires enhancement to Rs.10,000/- as consortium to wife and Rs.5,000/- towards love & affection to minor daughter. Claimants are entitled to total compensation of Rs.3,27,000/- (2000x12x13=Rs.3,12,000/-(+)Rs.10,000/- as consortium to wife and Rs.5,000/- to Kumari Rupa for love & affection) instead of Rs.2,47,000/- awarded by Tribunal.

So far as CMA 608/92 is concerned, as there was no permanent disability opined vide medical report, and looking to age of claimant injured and nature of her injuries sustained in the accident, I do not find any illegality committed by learned Tribunal in awarded lump sum compensation to her.

As regards limited liability to insurer, there is no dispute that premium charged by insurer was in excess of "Act only policy" and was under heading B Liability to public risk', which was indicated at Rs.240/- along with other premium. Division Bench of this Court in ***National Insurance Co. Ltd Vs. Laxmi*** (supra), observed as under :

> "A perusal of aforesaid terms show that under principal clause, the insurance company accepted its liability towards third party injuries coextensive with legal liability of the owner of vehicle. By providing various clauses under provisos, it limited its liability to Act only liability in respect of matters covered by one or other of the

> provisos. Under none of the provisos, limit of liability towards bodily injury or death caused to a third party has been restricted to statutory liability though liability to indemnify passengers has been limited to statutory liability."

However, Division Bench of this Court affirmed the view of learned Single Judge that since a premium of Rs.240/- has been charged by the insurance company to cover the liability to public risk, which is higher than the "Act only", premium of Rs.200/-.

In view of decision rendered in ***Smt. Dropadi Devi Vs. Inder Kumar (1996(3) WLC 356), and New India Assurance Co, Vs. Pushpa Kakkar (1992(II) ACC 191)***, the liability of the insurance company would be unlimited and the insurance company was liable to meet out all third party liability claims and the insurance company cannot avoid the liability to pay the awarded amount to the claimants. In this view of matter, finding recorded by learned Tribunal restricting liability of insurer only to Rs.1.5 lacs in instant case is not legally sustainable because once indisputably, premium was charged of Rs.240/- to cover liability to public risk which is higher than the "Act only" premium of Rs.200/-, liability of insurer would be unlimited and it cannot avoid liability to pay amount to claimants under Award impugned.

Consequently, CMA 608/92 fails and is hereby dismissed. However, CMA 611/92 succeeds and is hereby allowed and claimants are entitled for enhanced compensation for a sum of Rs.80,000/-

(Rs.3,27,000/- minus Rs.2,47,000/- awarded by Tribunal), which shall also carry interest @ 6% p.a., from the date of filing of claim application till its actual payment. Enhanced compensation with interest shall be deposited by Insurance Company through A/c payee bank draft/pay order before the Tribunal within two months.

The Tribunal is further directed to deposit the enhanced compensation in FDR for three years in Nationalised Bank in name of claimant Smt.Deepali w/o deceased, who will be entitled to receive monthly interest on FDR supra as well as full amount of FDR on its maturity.

To the above extent, impugned Award stands modified. No order as to costs. Record be returned back forthwith.

(Ajay Rastogi), J.

K.Khatri/608CMA1992.

This Court in ***National Insurance Co. Ltd Vs. Hastimal Lodha*** (supra), observed that merely charging of higher or even taking a comprehensive policy does not necessarily cover the third party risk to the unlimited extent unless terms of the policy so provide for. However, Division Bench of this Court affirmed the view of learned Single Judge that since a premium of Rs.240/- has been charged by the insurance company to cover the liability to public risk, which is higher than the "Act only", premium of Rs.200/-.